claimed under an unrecorded land contract entered into after the extension of the timber contract, possession being taken a few weeks before the timber was cut, although all of the stipulations of the contract were not performed nor the deed given until after the timber was cut. Neither party had actual notice of the rights of the other. *Held,* the defendant was entitled to the logs. *J. Neils Lumber Co.* v. *Hines* (1904), — Minn. —, 101 N. W. Rep. 959.

The court admitted that the plaintiff had a vested interest in the timber. *Pine County* v. *Tozer,* 56 Minn. 288. But considered that he was bound by notice of defendant's interest by reason of defendant's possession. It is well established that a subsequent purchaser is so bound as against a vendee rightfully in possession under an executory contract of sale. *Daniels* v. *Davidson,* 17 Ves. Jr. 432; *Wehn* v. *Fall,* 55 Nebr. 547. The general rule is, however, that an executory contract for the sale of land does not imply a right to possession before the time fixed for the completion of the contract and the delivery of the deed. *Chappell* v. *McKnight,* 108 Ill. 570; *Smith* v. *Jones,* 21 Utah 270; *Niles* v. *Phinney,* 90 Me. 122. Unless the conditions are performed, possession of the purchaser is possession of the vendor. WARVELLE VENDORS, § 183. Under the ruling of a number of courts the plaintiff lost all right to the logs by failure to remove them within the time limited by his contract. *Bunch* v. *Lumber Co.* (N. C.), 46 S. E. Rep. 24; *Boisaubin* v. *Reed,* 1 Abb. App. Dec. 161. But by the preponderance of authority such provisions are construed as mere covenants giving a right to remove all logs cut before the expiration of the contract, but affording damages for the breach. *McComber* v. *Ry. Co.,* 108 Mich. 491; *Hicks* v. *Smith,* 77 Wis. 146; *Hodges* v. *Buell* (Mich.), 95 N. W. Rep. 1078; *Emerson* v. *Shores,* 95 Me. 237; *Null* v. *Elliott,* 52 W. Va. 229. Plaintiff having this right to remove the logs after the expiration of his contract, and having a prior equity to that of the defendant, of which equity the defendant knew before he performed all the stipulations of his contract or received his deed, it would seem that plaintiff's title should be paramount. *Hoover* v. *Donally,* 3 Hen. & M. 316; *Simms* v. *Richardson,* 2 Litt. (Ky.) 275; *Jewett* v. *Palmer,* 7 John. Ch. 64; *Lain* v. *Morton* (Ky), 63 S. W. Rep. 286.

DEEDS—BUILDING RESTRICTIONS—EASEMENTS.—A deed from B. to F. contained the following restriction, "The dwelling house to be built on the granted premises shall be set back five feet from the line of Arlington street, and shall not exceed 65 feet in depth from said street, so as to correspond in this particular with my adjoining house. The front elevation and the material used in the construction of the front on Arlington street shall correspond with my house adjoining, etc." F., the grantee, did not build, but conveyed the premises to C., who built in accordance with the restriction. In this statutory action to determine the validity, nature and extent of the foregoing restriction between subsequent owners, *Held,* that the agreement amounted to an equitable restriction, namely, an easement in the granted premises appurtenant to the adjoining house and land. Further, such stipulation was only enforceable so long as the first house to be built upon the property conveyed

remained, and not as to all houses to be subsequently constructed, as held by the lower court. *Welch* v. *Austin et al.* (1905), — Mass. —, 72 N. E. Rep. 972.

Unless the intention clearly appear to make restrictions permanent, courts tend to treat them as applicable solely to existing conditions, and hence enforceable only as to the building then to be erected. *Boston Baptist Social Union* v. *Trustees of Boston University,* 183 Mass. 202. But when such stipulation in a deed is made for the benefit of the vendor's remaining land, as in the principal case, it is held enforceable by a subsequent grantee of the vendor. *Hemsley* v. *Marlborough Hotel Co.,* 62 N. J. Eq. 164. And so long as the beneficial enjoyment of the estate so conveyed, is not materially impaired by restrictions and conditions as to the mode of its use, they will be held valid. *Wakefield* v. *Van Tassell,* 202 Ill. 41. This is true, although restrictions upon the use of property by a grantee in fee are not favored in the law. *Ewertsen* v. *Gerstenberg,* 186 Ill. 344, 349. Courts are largely influenced in their attitude toward building restrictions, by a change in the character of the neighborhood. See 95 Am. St. Rep. (note) 221.

DEEDS—RULE IN SHELLEY'S CASE.—A deed to plaintiffs' mother, deceased, contained the following: "I, etc., do hereby convey as a free gift, said gift being in value $5,000, to B., my daughter, during her natural life, and at her death to her children, or to their lineal descendents," (the land in controversy). By B.'s will, all her real estate was given to the plaintiffs, her children and heirs at law, while to the defendants, her remaining children, she gave small legacies in full of their share in her estate. In this action to quiet title, plaintiffs contended that, by the application of the rule in Shelley's Case, B. took a fee simple estate under the foregoing grant. Defendants argued that, even if the rule was in force in Iowa, this case was not one for its application. *Held,* that the facts did not present a case for the application of the rule. The use of the word, "heirs," was essential; "children," as here used being rather a word of purchase than limitation, in accordance with the grantor's apparent intention. *Brown et al.* v. *Brown et al.* (1904), — Iowa —, 101 N. W. Rep. 81.

What appears of interest is the statement of the Chief Justice, who wrote the opinion, that, "Whether or not the rule in Shelley's Case is in force in this state is a question upon which the members of this court are not agreed." The misunderstanding upon this question seems to have arisen from the case of *Pierson et al.* v. *Lane,* 60 Ia. 60. This, however, is only authority for the statement that the statute De Donis is of no force in Iowa, and accordingly a grant to, "P. and the heirs of her body begotten, etc.," was construed to vest in P. a fee simple estate upon the birth of issue, a conditional fee having been thereby created. And we find the Pierson case given controlling effect in *Broliar* v. *Marquis,* 80 Ia. 49, 51, wherein the court says of that case that, "the rule in Shelley's Case was applied." But subsequent decisions seem to question the existence of the rule in Iowa. *Zavity* v. *Preston,* 96 Ia. 52. The latest adjudication involving the application of the rule, prior to the principal case, appears in *Wescott et al.* v. *Binford et al.,* 104 Ia. 645. But the court